

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CRAIG ALLEN BOONE,

Respondent.

Case No. A-2003-24

OAH No. N2004020310

PROPOSED DECISION

Administrative Law Judge M. Amanda Behe, State of California, Office of Administrative Hearings, heard this matter in Fresno, California on June 21 and 22, 2004.

Joel S. Primes, Deputy Attorney General, represented complainant.

Respondent Craig Allen Boone represented himself.

The Accusation was served on respondent on August 12, 2003, and he filed a Notice of defense on August 29, 2003. On March 24, 2004, respondent was served with a Notice of Hearing pursuant to Government Code sections 11505 and 11509 that the case would be heard in Fresno, California on June 21 and 22, 2004.

On June 10, 2004, Donna L. Ortlieb, Attorney at Law, Law Offices of Donna L. Ortlieb, 17621 Irvine Blvd, Tustin, CA, 92780, contacted the Office of Administrative Hearings requesting a continuance on the ground that she had recently been retained by respondent and needed time to obtain and review documents in preparation for hearing set for June 21-22. On June 10, 2004, Presiding Administrative Law Judge Rene Roman issued an ORDER DENYING MOTION FOR CONTINUANCE finding that the motion was untimely, lacked good cause, and failed to comply with California Code of Regulations, title 1, section 1020.

On Friday, June 11, 2004, at 2:09 p.m. Ms. Ortlieb filed a second request for continuance in which she noted that respondent did not contact her to represent him at the June 21-22 hearing until June 8, and that she had learned that morning she would commence a jury trial on June 21, 2004. On Monday, June 14, 2004, Presiding Judge Roman issued an

ORDER DENYING MOTION FOR CONTINUANCE finding that the second request was untimely, lacked good cause, and failed to strictly comply with California Code of Regulations, title 1, section 1020. Judge Roman noted that respondent was dilatory and irresponsible in failing to seek counsel until less than two weeks before hearing.

On the date set for hearing, June 21, 2004, Timothy B. Rote, Attorney at Law, Imhoff & Associates, P.C., made a special appearance to request a continuance. Mr. Rote noted that Ms. Ortlieb, a colleague in his firm, reassigned the case to him on June 16, 2004, and the only documents she passed on were some correspondence. He spoke with Tim Fitzgerald, an attorney and friend who had been informally assisting respondent to prepare for hearing, and Mr. Fitzgerald said he had no obtained no other documents.

Mr. Rote acknowledged that Mr. Primes has faxed him some of the exhibits, including Exhibit 3, on Friday, June 18, but faxing all the proposed exhibits, which were approximately three-inches thick, was impracticable. Mr. Rote argued that refusing to grant his continuance request would be a denial of respondent's fundamental due process rights and that complainant failed to provide discovery. That third request was denied as untimely and lacking good cause. Respondent had known that the matter would be heard since he was served with Accusation on August 12, 2003, but failed to timely secure counsel and to request discovery. The consequences of those delays, including the purported damage to his fundamental due process rights, were entirely his responsibility.

FACTUAL FINDINGS

1. Complainant Carol Sigmann is the Executive Officer of the Board of Accountancy, Department of Consumer Affairs, State of California (the Board) and filed the Accusation in her official capacity.

2. On July 29, 1988, the Board issued Certified Public Accountant Certificate Number CPA 50730 to Craig Allen Boone (respondent) under the laws of the State of California. The applicable renewal period of his certificate is April 1 through March 31 of even numbered years. In March 1989 respondent's certificate was in a renewed status with continuing education, i.e., an active license.

Respondent's certificate expired and was not valid from April 1, 1996 through November 15, 2000, because he had not paid the renewal fee required by Business and Professions Code section 5070.5 and had not submitted the declaration of compliance with continuing education requirements.

On November 20, 2000, respondent's renewal application was received by the Board with payment forms for the renewal periods ending March 31, 1996, 1998, and 2000, all of which indicated an inactive status license. Respondent's certificate was renewed effective November 16, 2000; the renewal was in error in that respondent failed to provide a declaration of compliance with continuing education requirements.

On March 23, 2002, respondent's renewal application for active status was received by the Board with only 20 hours of continuing education. The Board's Renewal Unit notified him of the deficiency in two separate letters. On November 7 and 8, 2002, he submitted additional course completion certificates. On November 13, 2002, the Board sent respondent a letter identifying the steps necessary to restore his practice rights. On November 20, 2002, he sent additional course completion certificates by fax, and on December 10 he submitted by fax a conversion application and ethics course certificate. As a result, respondent's certificate expired and was not valid from April 1, 2002 through November 19, 2002, because he had not submitted the declaration of compliance with continuing education requirements. Effective November 20, 2002, his certificate was renewed in an inactive status, for which a declaration of compliance with continuing education requirements was not required. Effective December 10, 2002, his certificate was renewed in active status.

Respondent's certificate was in full force and effect until March 31, 2004. The last address of record for respondent is Craig Allen Boone, P.O. Box 26658, Fresno, California, 93729. He has not previously been disciplined by the Board.

3. Business and Professions Code section 118 provides in pertinent part that:

(b) The suspension, expiration, or forfeiture by operation of law of a license ... shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

4. Business and Professions Code section 5100 provides in pertinent part that unprofessional conduct includes, but is not limited to, one or any combination of the following subsections:

....

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

....

5. Business and Professions Code section 5050 provides that:

No person shall engage in the practice of public accountancy in this State unless such person is the holder of a valid permit to practice public accountancy issued by the board; provided, however, that nothing in this chapter shall prohibit a certified public accountant or public accountant of another state, or an accountant of a foreign country

lawfully practicing therein, from temporarily practicing in this State on professional business incident to his regular practice in another state or country.

6. Business and Professions Code section 5051 provides that:

Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of this chapter if he or she does any of the following:

- (a) Holds himself or herself out to the public in any manner or one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional services therein as a public accountant for compensation.
- (b) Maintains an office for the transaction of business as a public accountant.
- (c) Offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional services that involve or require an audit, examination, verification, investigation, certification, presentation, or review of financial transactions and accounting records.
- (d) Prepares or certifies for clients reports on audits or examinations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports that are to be used for publication, for the purpose of obtaining credit, for filing with a court of law or with any governmental agency, or for any other purpose.
- (e) In general or as an incident to that work, renders professional services to clients for compensation in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data.
- (f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports, all as a part of bookkeeping operations for clients.
- (g) Prepares or signs, as the tax preparer, tax returns for clients.

7. Business and Professions Code section 5052 provides in pertinent part that:

For the purpose of keeping books, making trial balances, statements, making audits or preparing reports, all as a part of bookkeeping operations ...

8. Through December 31, 1998, Business and Professions Code section 5061 provided that:

No person engaged in the practice of public accountancy shall pay a commission to obtain a client, nor shall that person accept a commission for a referral to a client of the products and services of others. This section shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals presently or

formerly engaged in the practice of public accounting or payments to their heirs or estates.”

9. From January 1, 1999 through December 31, 2001, Business and Professions Code section 5061 provided that:

- (a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not: (1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client of the products and services of a third party.
- (b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.
- (c) A person engaged in the practice of public accountancy is prohibited from performing services for a client for a commission or from receiving a commission from a client, during the period in which the person also performs for that client, any of the services listed below and during the period covered by any historical financial statements involved in those listed services: ...
- (d) A person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, shall disclose that fact to any client or entity to whom the person engaged in the practice of public accountancy recommends or refers a product or service to which the commission relates.

10. California Code of Regulations, title 16, section 56 provides in pertinent part that:

- (a) A licensee shall not accept any fee or commission permitted by Business and Professions Code section 5061 unless he or she complies with the provisions of this section and Section 56.1.
- (b) A licensee who may receive a fee or commission pursuant to Business and Professions Code Section 5061 shall furnish to the client, at or prior to the time the recommendation of the product or service is made, a written disclosure statement in 12 point type or larger that contains the following information:
 - (1) The fact that the fee or commission is to be paid for professional services and that a fee or commission cannot be accepted solely for the referral of the client to the products or services of a third party.

- (2) A description of the product(s) or service(s) which the licensee is recommending to the client, the identity of the third party that is expected to provide the product or service, the business relationship of the licensee to the third party, a description of any fee or commission which may be received by the licensee, including, but not limited to, any supplemental fee or commission or other compensation allocable to the client being provided with the product or the service of the third party. Where the product(s) or service(s) cannot be specifically identified that the time of the initial disclosure, this information shall be included in a supplemental disclosure within 30 days of the receipt of the fee or commission.
 - (3) The dollar amount or value of the fee or commission payment(s) or the basis on which the payment(s) shall be computed.
- (c) The written disclosure shall be on letterhead of the licensed firm or shall be signed by the licensee. The disclosure statement shall be signed and dated by the client and contain an acknowledgment by the client that the client has read and understands the information contained in the disclosure. Supplemental disclosures as described in subsection (b)(2) of Section 56 need not be signed by the client or by the licensee. The licensee shall retain the disclosure statements for a period of five years and shall provide copies to the client.

11. California Code of Regulations, title 16, section 56.1 provides that:

The professional services which must be provided to the client in conjunction with the products or services of a third party under Business and Professions Code Section 5061 subdivision (b) shall include consultation with the client regarding the third party's product or service in relation to the client's circumstances.

12. Business and Professions Code section 5107 in pertinent part provides that:

- (a) The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary hearing, to direct any holder of a permit or certificate found guilty of unprofessional conduct in violation of subdivisions (b), (c), (i) or (j) of Section 5100, ..., or involving fiscal dishonesty in violation of subdivision (h) of Section 5100, to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.
- (b) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the executive officer, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.
- (c) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested to do so by the executive officer pursuant to subdivision (a). Costs are payable 120 days after the board's decision is final unless otherwise provided for by the administrative law judge or if the time for payment is extended by the board.

(d) The findings of the administrative law judge with regard to cost shall not be reviewable by the board to increase the cost award.

The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decisions fails to make a finding on costs requested by the executive officer pursuant to subdivision (a).

(e) The administrative law judge may make a further finding that the amount of reasonable costs awarded shall be reduced or eliminated upon a finding that respondent has demonstrated that he or she cannot pay all or a portion of the costs or that payment of the costs would cause an unreasonable financial hardship which cannot be remedied through a payment plan.

(f) When an administrative law judge makes a finding that costs be waived or reduced he or she shall set forth the factual basis for his or her finding in the proposed decision.

...

(j) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the permit or certificate of any holder who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the permit or certificate of any holder who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

...

(k) Nothing in this section shall preclude the board from seeking recovery of costs in an order or decision made pursuant to an agreement entered into between the board and the holder of any permit or certificate.

13. Respondent graduated from Fresno State in December 1984 with a degree in business with an accounting emphasis. He worked at Price Waterhouse until January 1989, and then for Thompson Henry and Co., a local CPA firm, for four years. Respondent then started his solo CPA practice.

14. From April 1996 to December 2002 respondent practiced public accountancy without an active valid permit. His CPA permit expired on April 1, 1996, and was not renewed until November 16, 2000, when the inactive permit was inadvertently processed as active. Respondent continuously practiced¹ accountancy during this period and until December 10, 2002, when the permit was properly converted to active status.

Respondent testified that he did not know his license had expired, and first learned it was expired was when he applied to electronically file federal tax returns. Respondent testified that he had a right to rely on the Board's error in notifying him that his license was active although he had not completed the continuing education required for license renewal.

¹ In his November 7, 2002, appearance before the Board's Administrative Committee Investigative Hearing respondent stated that since 1995 he had been continuously in the practice of public accountancy as a sole proprietor.

His view was not persuasive; respondent was not misled and was wholly aware he had not completed the required continuing education.

Respondent testified that he did not learn until the November 7, 2002, Board Committee meeting that he was not current on continuing education. His testimony was neither logical nor credible. Respondent knew that he had not completed 80 hours of continuing education every two years. Moreover, the Board had notified respondent by letter of his deficiencies in continuing education.

15. On October 19, 1999, the Board received a complaint regarding respondent's activities from Lawrence M. Warfield, CPA, Warfield & Company, Scottsdale, Arizona. Mr. Warfield is the court-appointed receiver in a lawsuit² filed on March 16, 1999, by the U.S. Securities and Exchange Commission against Benjamin Cook et al. alleging the operation of a prime bank instrument Ponzi³ scheme operated under the name "Dennel Finance Limited" (Dennel). In March 1999 the SEC issued an injunction ordering Dennel to cease operations. Mr. Warfield investigated and recovered funds invested in Dennel, and the assets of various persons and entities were placed in the receivership.

16. In October 1999, respondent's deposition was taken during the course of Mr. Warfield's investigation of Dennel. Dennel paid respondent fees or commissions for sponsoring clients based on the gross dollar amount of investments in Dennel made by the clients he referred. Under oath respondent confirmed that between February 1998 and March 1999 he received referral fees in the amounts reflected on FPC-1⁴ distribution statements. Respondent admitted receiving \$524,015.46 as referral fees, which he also termed "commissions." Specifically, he obtained the following fees for investments of the specified investors: \$228,769.90 for Arlen Bean, \$52,780.65 for Hal Treadaway, \$5,414.52 for Jacqueline Robinson, \$322.58 for Hal Hempstead, and \$1,008.06 for Michael and Andrea Boone.

17. On January 31, 2000, Mr. Warfield obtained an order from the court authorizing a lawsuit to seek return of the funds paid to respondent. He filed a lawsuit⁵ captioned "Lawrence J. Warfield, as Receiver for Dennel Finance Limited v. Craig Boone, Rhonda Boone, Ronald Berglund, Marlene Berglund, Otto Jarrell, Merlin Saunders, William Whelan, and Cindy Kay Whelan."

On February 16, 2001, the parties entered into a SETTLEMENT AGREEMENT AND MUTUAL RELEASE in the matter which provided that respondent would pay \$40,000 and sign over title to an undeveloped lot to the receiver, and respondent and his wife Rhonda Boon would supply an accurate current financial statement

² United States District Court for the Northern District of Texas, Dallas Division, Case No. 3-99CV0571-R.

³ Christina "Tina" MacGregor, the Board's expert witness, described that a "Ponzi" scheme is an illegal plan in which the returns paid out to existing investors come from new investors' funds.

⁴ FPC-1 was a company through which respondent received sponsor fees and disbursed funds to investors.

⁵ United States District Court for the Northern District of Texas, Dallas Division, Case No. 3-00CV272-R.

18. Mr. Warfield's complaint was assigned to Board Investigator Maryellen Fleury on October 28, 1999, and she received various documents including respondent's deposition and the settlement agreement from the receiver. The investigation was re-assigned to Christina "Tina" MacGregor, CPA, CFE, after the death of Ms. Fleury.

On August 8, 2002, a subpoena was served on respondent for all invoices for accounting services he rendered from February 1998 to March 1999. Respondent submitted records on August 30, 1999. Ms. MacGregor reviewed the documents in relation to the Dennel distribution sheets furnished by Mr. Warfield, and noted that six Dennel investors were also respondent's accounting clients.

19. On September 13, 2002, Ms. MacGregor spoke with respondent regarding the referral fees he received for the six Dennel investors who were also his accounting clients. Respondent stated that Michael Boone was his brother, and that Michael Der Manouel, an accounting client for thirty years, did not invest in Dennel.

Respondent acknowledged that his accountancy clients included Arlen Bean since before 1998, Hal Treadaway for more than twenty years, Jacqueline Robinson for more than ten years, and Hal Hempstead for an unspecified period. Respondent stated he did tax work only for those clients, and that he received sponsor or referral fees for their investments in Dennel. Respondent claimed to have advised those clients that he would be receiving the fees, but did not know if he had any disclosure statements from them.

20. After their conversation Ms. MacGregor wrote a September 13, 2002, letter to respondent requesting specified information and a written response to the allegation that he had received referral fees prohibited by the Accountancy Act. He was directed to describe his relationship with Arlen Bean, Hal Treadaway, Jacqueline Robinson, Hal Hempstead, and Michael and Andrea Boone and the investment services provided and fees received related to the investment program for those individuals. The letter also instructed respondent to state the method of calculating the fees and describe his accounting practice, and to submit his continuing education certificates and conversion application for his license, if applicable.

21. At a November 7, 2002, appearance before the Board's Administrative Committee Investigative Hearing respondent made statements under oath and provided documents. He admitted that he received commissions or referral fees for investments made by the clients listed in Ms. MacGregor's letter, i.e., Arlen Bean, Hal Treadaway, Jacqueline Robinson, Hal Hempstead, and Michael and Andrea Boone. Respondent claimed that only Mr. Bean and Mr. Hempstead had been clients before they invested in Dennel.

Respondent admitted that he did not have written disclosures to those accounting clients that he would be receiving commissions or referral fees based on their investments. He claimed to have orally advised investors that he would receive a fee, but admitted that investors were not told of the amount of the fee or how it was calculated. He admitted he

received referral fees from Mr. Bean's account as a direct referral, and that Mr. Bean did not know the amount of the fees respondent made from his investment.

22. Arlen K. Bean owned and operated the AK Bean Foundation, a non-profit corporation licensed to operate drunk driving programs, and Cabletech, a manufacturer of fiber optic couplings. Respondent prepared tax returns for Mr. Bean from confidential information provided to him as CPA including the 1995-96 AK Bean Foundation tax return, Mr. Bean's 1996 personal return, and the Cabletech return for 1997.

In early 1997 Mr. Bean and respondent discussed investment opportunities, and Mr. Bean told respondent he had money to invest and wanted a better return than the stock market. Respondent referred Mr. Bean to Heritage Pacific Leasing Company in which Mr. Bean invested about \$200,000. Respondent also evaluated an investment in a prepaid telephone plan which Mr. Bean declined. Throughout 1997 they discussed investment opportunities, and respondent was completely aware of Mr. Bean's finances and companies from the information he had provided to respondent as his CPA.

In the fall of 1997 respondent recommended Dennel as a good fixed-yield investment that would earn 24% per year. Mr. Bean asked respondent to do a due diligence check on Dennel. Respondent represented that Dennel was a trading scheme that was well understood in Europe, that the principals were experienced in the banking industry, that his money would be invested in foreign banks and his principal would always be protected.

Respondent provided Mr. Bean with a document captioned "Introduction to Bank Debenture Trading Programs" which described that such a program is "a secured asset management program ... where the principal investment is fully secured by a Bank Endorsed Guarantee." The document stated "There is no risk of losing the investor's principal investment" and that the Bank of International Settlements "was organized along the lines of the U.S. Federal Reserve System."

Mr. Bean believed that his investment was insured as if placed in a FDIC-insured bank, and relied on the claims in the document and the other information provided by respondent. Mr. Bean spoke to Mr. Cook of Dennel once, and asked some of the same questions he had discussed with respondent including the background of the company and the principals. Mr. Bean had been satisfied with respondent's accounting services, and had no reason to question his honesty. Mr. Bean made his investment in Dennel based on respondent's representations of the merits of the investment and that his parents, brother and attorney were also investing in Dennel.

Through respondent as his sponsor Mr. Bean invested \$100,000 in Dennel on January 18, 1998, and another \$100,000 on January 29, 1998. In March 1998, Mr. Bean attended a meeting in respondent's offices in Fresno at which Mr. Cook made a presentation about Dennel and investing in bank debenture trading. Mr. Bean expected that he would meet other investors at the meeting, but later learned that the approximately seven people present were all Dennel employees.

Mr. Bean and respondent discussed whether investment in Dannel qualified for his IRA, and in April 1998 respondent represented that it did and would be operated through Sterling Trust. Respondent had Mr. Bean complete a document captioned "AGREEMENT REFERENCE" which provided for a "joint venture agreement" between FPC-1 as joint venture manager and Mr. Bean as investor. Respondent signed the document on April 8, 1998, as "Joint Venture Manager" and Vice President of FPC-1 and General Partner of Alliance Investments Corporation. The address of his CPA firm was used as the address of the joint venture and FPC-1. Respondent provided an additional document to Mr. Bean captioned "Note Servicing Agent Agreement" which stated that the servicing fee was "Maximum Fee \$250" for the IRA investment. Mr. Bean concluded from that document that \$250 was the total fee to be paid to respondent for his IRA investment. Through respondent Mr. Bean invested \$480,000 of his pension money in Dannel, and in November 1998 he reinvested \$40,000 of interest earnings.

In July 1998 Mr. Bean reinvested \$24,000 of interest earnings from his initial Dannel investment. With regard to his non-IRA investment, respondent provided to Mr. Bean a document captioned "AGREEMENT REFERENCE" for a "joint venture agreement" between FPC acting as joint venture manager and Mr. Bean as investor. Respondent signed the document on July 30, 1998, as "Joint Venture Manager" and Vice President of FPC-1 and General Partner of Alliance Investments Corporation and his CPA office address was used as the address of the joint venture and FPC-1. Paragraph 5.0 of the agreement provided that "An amount of two percent per month of the INVESTOR'S initial deposit shall be paid monthly ... and shall be paid to Sterling Trust Company ... The return to the INVESTOR is based upon a fixed monthly return percent of two percent per month ..." In October 1998 Mr. Bean invested another \$100,000 in Dannel.

In November 1998, respondent withdrew as Mr. Bean's personal and business CPA and recommended Mel Levine, an accountant Mr. Bean later learned was employed by Dannel. In February 1999 Mr. Bean hired Mr. Levine to handle his tax returns. Mr. Levine later told him that Dannel was a Ponzi scheme from the beginning, and that respondent and other Dannel facilitators received 8% of the invested money each month and could decide how that would be divided with the investor. Mr. Levine's statements were the first information Mr. Bean had that that respondent had been receiving a percentage of his investment every month. Mr. Bean had no prior knowledge that respondent received compensation for his investment in Dannel, and knew only of the \$250 as a fee for administering the IRA account through Sterling Trust.

As of March 1999 when the SEC shut down Dannel Mr. Bean's initial investment in Dannel was \$100,000, and he received \$6,000 in interest payments. Through the receivership he was repaid \$20,050.90 on February 13, 2002, and \$4,663.00 on February 19, 2003. Mr. Bean lost \$69,286.10 of his investment in the scheme. He also invested \$544,000 in his IRA (\$480,000 initial investment and reinvestment of the \$24,000 interest payment made July 31, 1998 and the \$40,000 interest payment made November 23, 1998). Through the receivership he was repaid \$194,956.27 on February 11, 2002, and \$45,338.67 on

February 18, 2003, but lost \$207,822.91 in his IRA. Between his primary investment and his IRA Mr. Bean incurred total losses of \$277,109.01.

23. Robert A. Hempstead, a contractor, handled his mother's financial affairs after the March 28, 1995, death of his stepfather. Since 1995 respondent has completed tax returns for Mr. Hempstead, his stepfather's estate, and his mother's trust. Mr. Hempstead provided confidential financial information to respondent and sought his knowledge and experience as a CPA in making investment decisions.

In December 1998 respondent told Mr. Hempstead he had checked out Dennel very thoroughly and met with the principals and their attorney in Arizona, and that his own attorney and his family invested in Dennel. Based on respondent's recommendation Mr. Hempstead invested \$50,000 in Dennel.

Respondent provided Mr. Hempstead a document captioned "AGREEMENT REFERENCE" for a "joint venture agreement" between FPC acting as joint venture manager and Mr. Hempstead as investor. Respondent signed the document on January 27, 1999, and identified himself on the document as "Joint Venture Manager" and Vice President of FPC and General Partner of Alliance Investments Corporation. The address of his CPA firm was listed on the document as the address of the joint venture and FPC. Paragraph 5.0 of the agreement provided that "An amount of two percent per month of the INVESTOR'S initial deposit shall be paid monthly ... and shall be paid to Sterling Trust Company ... The return to the INVESTOR is based upon a fixed monthly return percent of Two percent per month ..."

Respondent did not tell Mr. Hempstead that he would be receiving a monthly percentage of the interest on his investment. Mr. Hempstead received only \$129.03, part of a month's interest, before Dennel ceased operations. He received some of his principal through Mr. Warfield's receivership, but has lost \$36,000 of his \$50,000 investment.

24. Jacqueline L. Robinson inherited approximately \$75,000 from her mother on June 25, 1998. Her son Walter, a friend of respondent, recommended that she consult with him about how she could invest her inheritance. When Ms. Robinson met with respondent for the first time they discussed investments and respondent recommended Dennel, a firm she had never heard of previously.

Ms. Robinson testified that she only invested in Dennel because of respondent's representations to her, and that he had done well in recommending investments for her son. Respondent never told Ms. Robinson that every month he was going to receive a percentage of the interest paid on her investment in Dennel.

For about four months Ms. Robinson received 2% monthly on her October 27, 1998, investment of \$75,000. When Dennel was shut down by the Securities and Exchange Commission Ms. Robinson lost \$41,000 of her investment. Respondent thereafter completed Ms. Robinson's tax returns and told her that he wrote off part of the loss on her Dennel

investment. Respondent testified that he wrote off a sum “in the \$20,000 to \$40,000 range” and Ms. Robinson’s tax return.

25. Kenneth Fitzgerald, an attorney and operator of various businesses, has been a friend and business acquaintance of respondent for fifteen years. His law partner, Bob Aguilar, advised him that respondent was involved in Dennel and asked if they should invest in it. Respondent assured Mr. Fitzgerald that he knew an insider at Dennel who advised that monthly interest checks were consistently paid. Mr. Fitzgerald received information packets from Dennel, and met with Dennel staff including Ben Cook in Arizona. Mr. Fitzgerald testified they drew a pyramid to illustrate how the debenture program worked, talked about how banks can loan more funds than they have, and how the UN builds infrastructure, etc. The Dennel staff said there was no risk of losing principal because it was in a big overseas bank and blocks of 25 million dollars were there as security and had to remain in the bank for its involvement in the UN infrastructure program.

Mr. Fitzgerald knew respondent received a percentage of the monthly interest on the investments of others, but was unaware that respondent had discretion to determine how much of the interest the investors would receive. Respondent did not provide a written disclosure that he would receive 5% of Mr. Fitzgerald’s investment monthly, but told him that fact. Mr. Fitzgerald acknowledged that he received only 2% and respondent received 5% of the 7% monthly rate of return although all the risk was Mr. Fitzgerald’s. Mr. Fitzgerald’s testimony that such a scheme “did not seem unusual” to him was not credible.

Mr. Fitzgerald invested \$300,000 in Dennel, and received only two monthly checks of 2% interest on his investment. He first realized something was wrong when he had not received an interest check for a month or two. Mr. Fitzgerald vigorously attempted to recover his investment, and provided documents and information to an employee of the Arizona Attorney General’s office which investigated Dennel.

Mr. Fitzgerald opined that based on his own investigation that the receiver, Mr. Warfield, is keeping the investigation open to unnecessarily bill and milk this matter. He further opined that respondent’s involvement was limited to doing accounting that Dennel asked him to do through FPC-1, and that respondent had been fooled like Mr. Fitzgerald was. He believes that respondent received only \$300,000 in commissions rather than \$500,000 to which he testified under oath, and that respondent’s reputation in the community is that of a very honest and competent CPA.

26. At hearing respondent admitted that he never had a securities license to sell stocks and bond and has never been a certified financial planner. Respondent testified he “thinks” he first learned of Dennel from “an investor ... I think he was an insurance agent” named Alan Clagg. Mr. Clagg told respondent that Dennel was paying 2% per month and he had proof the payments had been made for a number of months. Respondent did not indicate he made any effort to see that “proof.” Respondent denied any recollection of his contacts with Dennel before he signed a referral fee agreement with Dennel, and testified “I don’t recall what I did.”

Respondent claimed that he does not recall Dannel's "Introduction to Bank Debenture Trading Programs" document⁶, but that he saw many similar brochures and documents. His claim that he never provided the "Introduction to Bank Debenture Trading Programs" document to a client was not credible. Mr. Bean's testimony that he received the "Introduction to Bank Debenture Trading Programs" document from respondent was credible.

Dannel investors including Mr. Bean, Mr. Hempstead, and Ms. Robinson were required to sign an agreement that they would keep the fact of, and the particulars of, their investments confidential. Respondent acknowledged that it did seem unusual to him as a CPA that investors were required to sign a nondisclosure clause, but "people were getting paid, and I was advised by investors that they got their money returned."

Respondent testified that his family invested in Dannel, and he would not have gotten his parents or brother involved in anything he knew was fraudulent in any way. He testified that he could not recall how much his parents invested, and that he invested about \$20,000.

Although respondent testified he knows what a Ponzi scheme is the evidence established that he did not recognize a patent example of one. Dannel's claim to return 60% per year at no risk was profoundly suspect, but respondent did not find it even unusual. He acknowledged that the 5% monthly he received on Mr. Bean's investment was 60% per year, but claimed that he had seen higher sums paid. When asked to identify an investment that returned 60% per year respondent could not name one. Similarly, respondent could not identify any other investment in which the non-investor was receiving a 60% commission or fee.

The evidence established that respondent lacked knowledge and understanding of the Dannel program and market, and failed to question or investigate the promised excessive rate of return or the validity of the investment. As a result investors, some of whom were his accountancy clients, were provided with false and misleading information regarding the true nature of their investments.

27. Ms. MacGregor's expert testimony established that respondent should have done competent due diligence to understand the Dannel investment, including evaluation of the claim that investments would result in such high returns with no risk. Ms. MacGregor persuasively testified that a competent CPA would have discerned from the non-disclosure form investors were required to sign, the rate of return, the program description claiming similarity to a federally insured bank, the manner in which funds were transferred in and out, etc., that Dannel was a Ponzi scheme.

Ms. MacGregor persuasively testified that CPAs are taught to be independent and objective in providing advice, and that clients rely on that objectivity when they seek a

⁶ See Finding 22.

CPA's advice. The evidence established that respondent was not independent and objective when he provided information about Dannel, and that he was motivated by financial gain.

28. In the subject hearing respondent acknowledged that he received referral fees for placing investors in Dannel. When asked to distinguish between a commission and a referral fee he testified "I don't really know if there is any difference." Respondent admitted that he did not disclose to all investors that he was receiving commissions or referral fees on their investments, but claimed he told "many" of them.

Respondent's admissions to the Board's Administrative Committee Investigative Hearing established that he was not providing professional services, i.e., services indicating an on-going relationship with the specified investors, during the time he received commissions from their investments. Respondent did not even know some of the investors for whose investments he received commissions.

Respondent did not inform Dannel investors, some of whom were his accountancy clients, that he was receiving a portion of the return on their investments as a fee or commission. As a result, investors did not have accurate and complete information regarding their investments.

29. From at least February 15, 1998 to February 15, 1999, Dannel sent respondent monthly distribution information which listed the investor, the amount invested, and the interest earned on the investments, which ranged from 5-8 % per month. Dannel paid the interest into FPC-1 by various means including wire transfers. Respondent testified that the purpose of FPC-1 was to process and provide accounting for the Dannel payments.

Respondent testified on direct that he only provided accounting services for FPC-1 in the form of "simple account receivables" such as preparation of monthly investor statements of the principal and return much like that provided by banks for certificates of deposit. That testimony was false; on cross-examination respondent admitted that he "managed" FPC-1.

Respondent acknowledged that FPC-1 was located in his accounting office and the monthly statements he sent to investors for FPC-1 were sent from and contained that address. He claimed to not know when or how FPC-1 was created, if it was part of Dannel, or who any of the officers or directors were. When asked how he could have been managing a business for unknown people respondent was evasive. He then testified that he was "told about" FPC-1 by Wayne McClaus, an investor in Dannel, who was involved in some way in setting up FPC-1 or involved in retirement accounts being set up in it. Respondent's testimony that he did not know the entity for which he handled more than a million dollars was wholly implausible.

30. Although he had the Dannel monthly distribution data respondent did not inform investors of the true rate of return on their investments. He also failed to inform investors that he retained a portion of the return for himself and selected how much to pass on to the individual investors. He specifically admitted that he did not advise Mr. Bean, Mr.

Hempstead or Ms. Robinson how much he was receiving in commissions or fees on their investments.

Respondent decided how much of the return on the investment received from Dannel he would pass on to investors, and made choices ranging from 2% to 5%. He claimed to not recall how much he kept but acknowledged it "could be" from 5-7%. After he paid a portion of the interest money to Dannel investors respondent retained the remainder. He admitted that except for occasionally paying someone a finder or referral fee the money went into his own bank account. At hearing respondent claimed that the money represented "accounting fees" from investors such as Mr. Treadaway, referral fees, and his "management" of FPC-1. Respondent told the Board's Administrative Committee Investigative Hearing he received the 5% per month on investments for referring investors to Dannel.

Mr. Warfield's investigation of Dannel records indicated that 1.3 million dollars was deposited in FPC-1 and managed or distributed by respondent. When asked about his accounting records for the distribution of that sum, and how much he kept for himself, respondent testified he has those records "somewhere in my office." He offered no explanation for his failure to bring those documents to the hearing regarding his professional license.

Respondent admitted in his testimony before the Board's Committee that he received \$524,000 in commissions or fees on the investments. At hearing respondent claimed to "think" that he received less than the \$524,000 in referral fees but did not trouble to present his records to support that claim. Respondent performed no professional services for his clients related to the Dannel products or services to justify or explain the fees he retained, and they were clearly referral or sponsor fees rather than commissions.

31. Respondent presented a document captioned "Craig A. and Rhonda L. Boone Statement of Financial Condition" dated February 15, 2001, which he had filed with Mr. Warfield under penalty of perjury⁷ as required by the settlement agreement. The document indicated an excess of assets over liabilities of \$96,765. Respondent testified that at present the shares in Forward, Inc., listed on the document are worthless. He acknowledged that his personal residence, which was valued on the document at \$385,000, is now worth \$500,000. Respondent's testimony that he does not know what his income was in 2003 was not credible.

Respondent prepares and files the income tax returns for his accounting business. He testified he has "no idea" what his firm's income was in 1998 or 1999 or if his income decreased after Dannel stopped payments to FPC-1. His testimony was not credible.

⁷ The document bore certification language but the signature block was blank. Respondent did not explain why it was unsigned.

LEGAL CONCLUSIONS

1. Clear and convincing evidence to a reasonable certainty establishes cause for discipline of respondent's license for practicing without a permit pursuant to Business and Professions Code sections 5050, 5051, and 5100 subdivision (c).

2. Clear and convincing evidence to a reasonable certainty establishes cause for revocation of respondent's license for unprofessional conduct and gross negligence pursuant to Business and Professions Code sections 5061 and 5100 subdivision (c), and California Code of Regulations, title 16, sections 56 and 56.1.

3. Respondent testified that he had documents at his office regarding his management of FPC-1 and the sums he received from Denel. His failure to submit those documents to the Board's investigator and at its Committee hearing established his failure to cooperate with the investigation. He did not explain his failure to provide the same documents to Ms. Ortlieb and Mr. Rote, his attorneys, before hearing and their preparation was limited to some correspondence. Finally, respondent failed to present that evidence at hearing.

There are substantial aggravating circumstances to be considered in determining the penalty including that respondent's violations were knowingly committed and occurred over more than a year. Respondent took advantage of his clients for substantial personal gain, and his violations resulted in financial damage to his clients and other consumers. Finally, respondent knew or should have known that his actions could harm his clients or other consumers.

Respondent displayed no remorse other than regret for the impact of the receiver's actions on his own finances and those of his family. His argument that after years of failing to complete continuing education he was entitled to the benefit of the Board's erroneous issuance of an active license was a refusal to recognize his wrongdoing.

Respondent presented no credible evidence in mitigation or rehabilitation. No aspect of his testimony at hearing or appearance before the Board's Committee suggested that he would now be more competent and prudent in his accounting activities if he were permitted to retain his certificate under strict terms of probation. The practice of public accountancy demands practitioners who are honest and ethical. Respondent's actions have proven him to be otherwise. Protection of the public interest requires nothing less than revocation of his license.

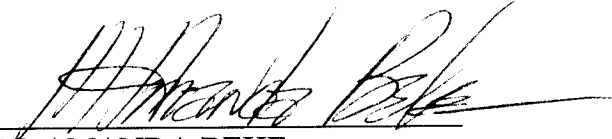
4. Complainant's costs of investigation and prosecution were \$27,418.55, and pursuant to Business and Professions Code section 5107 those costs are found to be reasonable. Cause exists, pursuant to Business and Professions Code section 5107, to require respondent to pay those costs.

The Accusation set forth the text of Business and Professions Code section 5107, which permits reduction or elimination of the cost award upon a showing that respondent would be unable to pay the costs or would suffer unreasonable and irremediable hardship that could not be remedied through a payment plan. Although provided with that notice of the statute, respondent did not present credible or current evidence of such matters. Rather, he presented an unsigned document three years out of date and the unbelievable claim that he does not recall his income last year.

ORDER

1. Certified Public Accountant Certificate Number CPA 50730 issued to Craig Allen Boone IS REVOKED.
2. Within two years of the effective date of this Decision respondent Craig Allen Boone shall pay the Board's costs of \$27,418.55 on a payment schedule to be established by the Board's staff.

Dated: October 3, 2004


M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CRAIG A. BOONE
P.O. Box 26658
Fresno, CA 93729

Certificate No. 50730

Respondent.

Case No.AC-2003-24

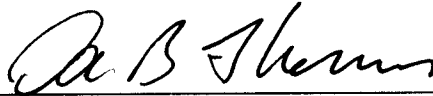
DECISION AND ORDER

OAH No. N2004020310

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on December 22, 2004.

It is so ORDERED on November 22, 2004.



Ian B. Thomas, President

For The CALIFORNIA BOARD OF ACCOUNTANCY
CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

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CALIFORNIA BOARD
OF ACCOUNTANCY

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Attorneys for Complainant.

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No.

CRAIG ALLEN BOONE
P.O. Box 26658
Fresno, CA 93729

A C C U S A T I O N

License No.: CPA 50730

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

LICENSE STATUS

2. On or about July 29, 1988, the California Board of Accountancy issued Certificate number CPA 50730 (Certified Public Accountant) to CRAIG A. BOONE (Respondent).

3. The certificate is subject to renewal every two years pursuant to Business and Professions Code, Section 5070.6. The applicable renewal period of this certificate is April 1 through March 31 of even numbered years.

4. The California Board of Accountancy's licensing records were transferred to the Department of Consumer Affairs' centralized computer system in March, 1989. As a result, the

1 underlying documentation related to license history is unavailable prior to that date. The
2 computerized records reflect that in March 1989, CPA license 50730 was in a renewed status
3 with continuing education ("active").

4 5. The certificate expired and was not valid during the period April 1, 1996,
5 through November 15, 2000.

- 6 a) The renewal fee, required by the Business and Professions Code 5070.5
7 was not paid; and
8 b) Declaration of compliance with continuing education requirements was
9 not submitted.

10 6. The certificate was renewed effective November 16, 2000, upon receipt of
11 the renewal fee ("inactive"). Declaration of compliance with continuing education was not
12 required. The certificate was inadvertently processed with the active status without a declaration
13 of compliance with continuing education.

14 7. The certificate expired and was not valid during the period April 1, 2002
15 through November 19, 2002.

16 8. The certificate was renewed effective November 20, 2002, in the inactive
17 status. Declaration of compliance with continuing education was not required.

18 9. The certificate was renewed under the provisions of California Code of
19 Regulations, Title 16, Section 87.1 ("reentry") effective December 10, 2002, upon receipt of the
20 declaration of compliance with continuing education requirements ("active").

21 10. The certificate is currently in force and effect and expires subject to
22 renewal on March 31, 2004.

23 11. The last address of record for Craig Allen Boone, Certificate number
24 CPA 50730, as appearing in the records of the California Board of Accountancy, in conformance
25 with California Code Regulations, Title 16, Chapter 1, Section 3, is "Craig Allen Boone, P.O.
26 Box 26658, Fresno, California 93729."

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1 deemed to be engaged in the practice of public accountancy within
2 the meaning and intent of this chapter if he or she does any of the following:

3 "(a) Holds himself or herself out to the public in any
4 manner as one skilled in the knowledge, science, and
5 practice of accounting, and as qualified and ready to render
6 professional service therein as a public accountant for
7 compensation.

8 (b) Maintains an office for the transaction of business as a
9 public accountant.

10 (c) Offers to prospective clients to perform for
11 compensation, or who does perform on behalf of clients for
12 compensation, professional services that involve or require
13 an audit, examination, verification, investigation,
14 certification, presentation, or review of financial
15 transactions and accounting records.

16 (d) Prepares or certifies for clients reports on audits or
17 examinations of books or records of account, balance
18 sheets, and other financial, accounting and related
19 schedules, exhibits, statements, or reports that are to be
20 used for publication, for the purpose of obtaining credit, for
21 filing with a court of law or with any governmental agency,
22 or for any other purpose.

23 (e) In general or as an incident to that work, renders
24 professional services to clients for compensation in any or
25 all matters relating to accounting procedure and to the
26 recording, presentation, or certification of financial
27 information or data.

28 ///

1 (f) Keeps books, makes trial balances, or prepares
2 statements, makes audits, or prepares reports, all as a part
3 of bookkeeping operations for clients.

4 (g) Prepares or signs, as the tax preparer, tax returns for
5 clients."

6 16. Business & Professions Code section 5061 provides:

7 "No person engaged in the practice of public accountancy
8 shall pay a commission to obtain a client, nor shall that
9 person accept a commission for a referral to a client of
10 products or services of others. This section shall not
11 prohibit payments for the purchase of an accounting
12 practice or retirement payments to individuals presently or
13 formerly engaged in the practice of public accounting or
14 payments to their heirs or estates."²

15 17. Business and Professions Code section 5061 provides:

16 "(a) Except as expressly permitted by this section, a person
17 engaged in the practice of public accountancy shall not: (1)
18 pay a fee or commission to obtain a client or (2) accept a
19 fee or commission for referring a client to the products or
20 services of a third party.

21 (b) A person engaged in the practice of public accountancy
22 who is not performing any of the services set forth in
23 subdivision (c) and who complies with the disclosure
24 requirements of subdivision (d) may accept a fee or
25 commission for providing a client with the products or
26 services of a third party where the products or services of a

27
28 2. As effective through December 31, 1998.

1 third party are provided in conjunction with professional
2 services provided to the client by the person engaged in the
3 practice of public accountancy. Nothing in this subdivision
4 shall be construed to permit the solicitation or acceptance
5 of any fee or commission solely for the referral of a client
6 to a third party.

7 (c) A person engaged in the practice of public accountancy
8 is prohibited from performing services for a client, for a
9 commission or from receiving a commission from a client,
10 during the period in which the person also performs for that
11 client, any of the services listed below and during the
12 period covered by any historical financial statements
13 involved in those listed services:

14 . . .

15 (d) A person engaged in the practice of public accountancy
16 who is not prohibited from performing services for a
17 commission, or from receiving a commission, and who is
18 paid or expects to be paid a commission, shall disclose that
19 fact to any client or entity to whom the person engaged in
20 the practice of public accountancy recommends or refers a
21 product or service to which the commission relates."³

22 18. California Code of Regulations, Title 16, Section 56 provides:

23 "(a) A licensee shall not accept any fee or commission
24 permitted by Business and Professions Code Section 5061
25 unless he or she complies with the provisions of this section
26 and Section 56.1.

27
28 3. Effective January 1, 1999 through December 31, 2001.

1 (b) A licensee who may receive a fee or commission
2 pursuant to Business and Professions Code Section 5061
3 shall furnish to the client, at or prior to the time the
4 recommendation of the product or service is made, a
5 written disclosure statement in 12 point type or larger that
6 contains the following information:

7 (1) The fact that the fee or commission is to be paid
8 for professional services and that a fee or commission
9 cannot be accepted solely for the referral of the client to the
10 products or services of a third party.

11 (2) A description of the product(s) or service(s)
12 which the licensee is recommending to the client, the
13 identity of the third party that is expected to provide the
14 product or service, the business relationship of the licensee
15 to the third party, a description of any fee or commission
16 which may be received by the licensee, including, but not
17 limited to, any supplemental fee or commission or other
18 compensation allocable to the client being provided with
19 the product or service of the third party. Where the
20 product(s) or service(s) cannot be specifically identified at
21 the time of the initial disclosure, this information shall be
22 included in a supplemental disclosure within 30 days of
23 receipt of the fee or commission."

24 (3) The dollar amount or value of the fee or
25 commission payment(s) or the basis on which the
26 payment(s) shall be computed.

27 (c) The written disclosure shall be on letterhead of the
28 licensed firm or shall be signed by the licensee. The

1 disclosure statement shall be signed and dated by the client
2 and contain an acknowledgment by the client that the client
3 has read and understands the information contained in the
4 disclosure. Supplemental disclosures as described in
5 subsection (b)(2) of Section 56 need not be signed by the
6 client or by the licensee. The licensee shall retain the
7 disclosure statements for a period of five years and shall
8 provide copies to the client."

9 19. California Code of Regulations, Title 16, Section 56.1 provides:
10 "The professional services which must be provided to the client in
11 conjunction with the products or services of a third party under
12 Business and Professions Code Section 5061(b) shall include
13 consultation with the client regarding the third party's product or
14 service in relation to the client's circumstances."

15 20. Business and Professions Code section 118(b) provides:
16 "(b) The suspension, expiration, or forfeiture by operation of law
17 of a license issued by a board in the department, or its suspension,
18 forfeiture, or cancellation by order of the board or by order of a
19 court of law, or its surrender without the written consent of the
20 board, shall not, during any period in which it may be renewed,
21 restored, reissued, or reinstated, deprive the board of its authority
22 to institute or continue a disciplinary proceeding against the
23 licensee upon any ground provided by law or to enter an order
24 suspending or revoking the license or otherwise taking disciplinary
25 action against the licensee on any such ground."

26 21. Business and Professions Code section 5107 provides:
27 "(a) The executive officer of the board may request the
28 administrative law judge, as part of the proposed decision in a

1 disciplinary proceeding, to direct any holder of a permit or
2 certificate found guilty of unprofessional conduct in violation of
3 subdivisions (b), (c), (i), or (j) of Section 5100, or involving a
4 felony conviction in violation of subdivision (a) of Section 5100,
5 or involving fiscal dishonesty in violation of subdivision (h) of
6 Section 5100, to pay to the board all reasonable costs of
7 investigation and prosecution of the case, including, but not limited
8 to, attorneys' fees. The board shall not recover costs incurred at
9 the administrative hearing.

10 (b) A certified copy of the actual costs, or a good faith estimate
11 of costs where actual costs are not available, signed by the
12 executive officer, shall be prima facie evidence of reasonable costs
13 of investigation and prosecution of the case.

14 (c) The administrative law judge shall make a proposed finding of
15 the amount of reasonable costs of investigation and prosecution of
16 the case when requested to do so by the executive officer pursuant
17 to subdivision (a). Costs are payable 120 days after the board's
18 decision is final unless otherwise provided for by the
19 administrative law judge or if the time for payment is extended by
20 the board.

21 (d) The finding of the administrative law judge with regard to
22 cost shall not be reviewable by the board to increase the cost
23 award.

24 The board may reduce or eliminate the cost award, or remand to
25 the administrative law judge where the proposed decision fails to
26 make a finding on costs requested by the executive officer pursuant
27 to subdivision (a).

28 ///

1 (e) The administrative law judge may make a further finding that
2 the amount of reasonable costs awarded shall be reduced or
3 eliminated upon a finding that respondent has demonstrated that he
4 or she cannot pay all or a portion of the costs or that payment of the
5 costs would cause an unreasonable financial hardship which cannot
6 be remedied through a payment plan.

7 (f) When an administrative law judge makes a finding that costs be
8 waived or reduced, he or she shall set forth the factual basis for his
9 or her finding in the proposed decision.

10 (g) Where an order for recovery of costs is made and timely
11 payment is not made as directed by the board's decision, the board
12 may enforce the order for payment in any appropriate court. This
13 right of enforcement shall be in addition to any other rights the
14 board may have as to any holder of a permit or certificate directed
15 to pay costs.

16 (h) In any judicial action for the recovery of costs, proof of the
17 board's decision shall be conclusive proof of the validity of the
18 order of payment and the terms of payment.

19 (i) All costs recovered under this section shall be deposited in the
20 Accountancy Fund.

21 (j) (1) Except as provided in paragraph (2), the board shall not renew or
22 reinstate the permit or certificate of any holder who has failed to pay all of the
23 costs ordered under this section.

24 (2) Notwithstanding paragraph (1), the board may, in its
25 discretion, conditionally renew or reinstate for a maximum of one
26 year the permit or certificate of any holder who demonstrates
27 financial hardship and who enters into a formal agreement with the

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1 board to reimburse the board within that one-year period for those
2 unpaid costs.

3 (k) Nothing in this section shall preclude the board from seeking
4 recovery of costs in an order or decision made pursuant to an
5 agreement entered into between the board and the holder of any
6 permit or certificate."

7 22. Business and Professions Code section 5052 provides, in part:
8 "for the purpose of keeping books, making trial balances,
9 statements, making audits or preparing reports, all as a part of
10 bookkeeping operations..."

11 UNPROFESSIONAL CONDUCT

12 Respondent violated Business and Professions Code sections 5050, 5051, 5061, 5100(c),
13 and California Code of Regulations, Title 16, sections 56 and 56.1 as follows:

14 A. Receipt of Commissions/Referral Fee

15 1. During the period of 1998 and 1999, Respondent received referral
16 fees/commissions totaling \$88,358.71 for referring a client and for investments made by a client
17 in Dennel Finance, Ltd., an investment program. This referral fee/commission was paid to
18 Respondent for sponsoring a client and arranging placement applications in Dennel's private
19 placement investment program. Respondent was paid a monthly commission based on the gross
20 dollar amount of investments in Dennel made by the client recruited by Respondent. These
21 commissions were paid from invested funds as a fee for referring investors to the Dennel Trading
22 Program.

23 2. During the period 1998 and 1999, Respondent received commissions based on the
24 gross dollar amount of investments made by investors in the Dennel investment program. He
25 received referral fees/commissions totaling \$524,015.48 for his referrals.

26 3. No written disclosure statements were obtained from the investors.

27 4. No professional services were rendered to the investors.

28 ///

1 B. Practice Without Permit

2 1. Since April 1996, Respondent has practiced public accountancy without an active,
3 valid permit. Respondent's CPA permit expired on April 1, 1996, and was not renewed until
4 November 16, 2000 when the "inactive" permit was inadvertently processed as "active."
5 Respondent continuously practiced accountancy during this period and until December 10, 2002,
6 when the permit was properly converted to active status.

7 C. Extreme Departure from Professional Standards

8 Craig Boone was grossly negligent within the meaning of Business and Professions Code
9 section 5100(c) in performing bookkeeping services that were performed for the Dannel
10 Investment Program through FPC-1. The services were an extreme departure from professional
11 standards and such departure constitutes gross negligence. Specific acts of gross negligence are
12 as follows:

13 1. The licensee lacked both the requisite knowledge and understanding of the
14 operations, the nature of the investment program and the alleged European market, which was
15 the primary basis for the investment program, to prepare the investment account statements.

16 2. The licensee, through his accountancy practice, prepared investment
17 account statements for Mr. Arlen Bean and others who had invested in the Dannel Investment
18 Program. The licensee's lack of knowledge and understanding of the program and market
19 resulted in his failure to question or investigate questionable information such as the excessive
20 rate of return and the validity of the program. The licensee was aware of the full rate of return
21 allegedly being earned on the investments (a rate of approximately 60%); however, he did not
22 inform the investors, including his accountancy practice clients, of the "true" rate of return.
23 Consequently, investors were provided with information that was either false or extremely
24 misleading as to the true nature and status of their investment.

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1. Revoking, suspending, or otherwise imposing discipline on CPA 50730 (Certified Public Accountant), issued to CRAIG A. BOONE;

3. Taking such other and further action as deemed necessary and proper.


CAROL SIGMANN
Executive Officer

CAROL SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant